

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,

:  
Plaintiff,

v.

:  
Case No. 3:10cr209

LARRY WALLING,

:  
JUDGE WALTER H. RICE

:  
Defendant.

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DECISION AND ENTRY OVERRULING DEFENDANT'S MOTION FOR  
RETURN OF SEIZED PROPERTY (DOC. #15), FILED PURSUANT TO  
FED.R.CR.P. 41(g)

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The Defendant has filed a Motion for Return of Seized Property (Doc. #15), pursuant to Fed.R.Cr.P. 41(g), consisting of some \$85,000 in currency, a 2008 Chevy Avalanche, a 1984 Oldsmobile Cutlass Supreme and a 1998 Lexus. The Government filed a memorandum contra to Defendant's request (Doc. #18), on February 19, 2013. Moving Defendant has not responded by way of a reply memorandum or other communication to this Court.

Pursuant to the reasoning and citations of authority (with one exception) set forth in the memorandum of the Government in opposition to Defendant's Motion for Return of Seized Property (Doc. #18), coupled with a review of the attachments thereto and the entirety of this Court's files, both in the above captioned and in the civil forfeiture matter, Case No. 3:08cv218, this Court deems Defendant's Motion to be not well taken and same is, therefore, overruled in its entirety.

As indicated above, this Court adopts all of the reasoning set forth by the Government in its Memorandum Contra, save one, to wit: that Defendant's Rule 41(g) Motion should be dismissed because he has counsel and the Motion was filed pro se. While Mr. Wagner represented the Defendant at the time his criminal matter was pending and, further, while Mr. Wagner did in fact file an administrative claim on behalf of another individual in the civil matter, this Court has no way of knowing whether Mr. Wagner represents the Defendant with regard to the matters seeking return of seized property. To conclude that he does or does not would be nothing more than an assumption based upon lack of definitive evidence, one way or the other. In short, this Court has considered the merits of the Defendant's Motion for Return of Seized Property, even though same was filed pro se.

WHEREFORE, in short, the property sought to be returned has already been legally forfeited to the Government, the currency by administrative forfeiture proceedings, and the three vehicles in Case No. 3:08cv218.



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April 12, 2013

WALTER H. RICE

UNITED STATES DISTRICT JUDGE

Copies to:

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Courtesy copy to:

Charles Wagner, Esq.